

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

and)

Implementation of the Local Competition)
Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-98

PETITION FOR CLARIFICATION OR IN THE ALTERNATIVE FOR A WAIVER

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), by and through their attorneys, hereby respectfully submit the following request for clarification or, in the alternative, for waiver of a section of the Commission's recent order regarding collocation.¹ Specifically, this request seeks clarification of the section of the *Collocation Order* related to amending state tariffs and statements of generally available terms and conditions ("SGAT") regarding collocation interval deadlines.

I. Discussion

The Commission released its *Collocation Order* on August 10, 2000. This *Order* established, *inter alia*, national provisioning interval standards for physical collocation.² In

¹ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, *Order On Reconsideration and Second Further Notice Of Proposed Rulemaking In CC Docket No. 98-147 And Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98*, FCC 00-297, released August 10, 2000 ("Collocation Order").

² See *Collocation Order* ¶ 21.

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establishing these standards, however, the *Collocation Order* is explicitly clear in numerous sections that such standards are applicable in the absence of state standards or alternative standards agreed to by requesting carriers and incumbent local exchange carriers (“ILEC”).³

Indeed, the *Collocation Order* specifically states:

We therefore conclude that we should adopt national standards for physical collocation provisioning *that will apply when the state does not set its own standards or if the requesting carrier and incumbent LEC have not mutually agreed to alternative standards*. A state could set its own standards by statute, through an existing or future rulemaking order, by enforcing a state tariff, or by applying the precedent of a state arbitration decision. An incumbent LEC, of course, may petition a state to extend the application processing and provisioning interval deadlines in specific circumstances (e.g., conditioning space in a premises is particularly difficult). For purposes of our rules, a state decision granting an extension constitutes a state standard for the arrangement in question.⁴

Accordingly, if a state has set its own provisioning interval standards as described above, the *Collocation Order* clearly provides that these are the standards that should apply in that state and not the national standards established by the Commission in the *Collocation Order*.

Despite these unambiguous provisions regarding the application of state standards when a state has enacted such standards, a later paragraph in the *Collocation Order* seems to contradict

³ See e.g., *id.* ¶ 21 (“...we find a need for national application processing and provisioning interval standards for physical collocation that will apply *in the absence of state standards*.”); ¶ 22 (“Absent national standards, *applicable in the absence of state standards or alternative standards agreed to by requesting carriers and incumbent LECs, ...*”); ¶ 23 (“Therefore, in the exercise of our authority, we find that maximum application processing and provisioning intervals for physical collocation that apply, *except to the extent a state sets its own standard or the parties have mutually agreed to an alternative standard, ...*” “We conclude that national standards for collocation provisioning that apply, *in the absence of a state standard or the parties’ mutual agreement to an alternative standard*, will help avoid having telecommunications services delayed indefinitely pending the completion of state proceedings.”)(emphasis added).

⁴ *Id.* ¶ 22 (emphasis added).

these very provisions in applying the newly established national standards. Paragraph 36 of the *Collocation Order* states:

In some instances, a state tariff sets forth the rates, terms, and conditions under which an incumbent LEC provides physical collocation to requesting carriers. An incumbent LEC also may have filed with the state commission a statement of generally available terms and conditions (SGAT) under which it offers to provide physical collocation to requesting carriers. *Because of the critical importance of timely collocation provisioning, we conclude that, within 30 days after the effective date of this Order, the incumbent LEC must file with the state commission any amendments necessary to bring a tariff or SGAT into compliance with the national standards. At the time it files these amendments, the incumbent also must file its request, if any, that the state set intervals longer than the national standards as well as all supporting information.* For a SGAT, the national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation. Where a tariff must be amended to reflect the national standards, those standards shall take effect at the earliest time permissible under applicable state requirements.⁵

BellSouth reads this paragraph as applying only where the requirements of paragraph 22 are not met, i.e., if a state commission has not adopted its own standards by “statute, through an existing or future rulemaking order, by enforcing a state tariff, or by applying the precedent of a state arbitration decision.”⁶ Thus, for example, if a state commission had conducted a proceeding in which it had established provisioning intervals from which an ILEC had implemented in its tariff or SGAT, or if an ILEC had filed a tariff regarding collocation which a state commission had formally accepted, BellSouth does not believe that paragraph 36 would require that the ILEC file an amendment to its tariff or SGAT changing the standards adopted by the state commission to the standards set by the *Collocation Order*. This would be in direct

⁵ *Id.* ¶ 36 (emphasis added).

⁶ *Id.* ¶ 22.

opposition with the above-cited paragraph 22, which requires application of the national standards when a state commission has *not* acted or the parties have not reached an agreement on their own.

If BellSouth's reading of the *Collocation Order* is incorrect, however, the Commission should waive paragraph 36 to the extent it would require an adoption of the national standards in states that have already adopted collocation standards for at least three reasons. First, the Commission's decision to allow states to establish standards is consistent with the spirit of the *Collocation Order*. Without doubt, the state commissions that have established standards are much more cognizant of its particular state's situation and needs. Therefore, the state standards, and not the national standards, are more appropriate and should be applied.

Second, many of the competitive local exchange carriers ("CLEC") that argued zealously for national standards acknowledged that where states had established standards, national standards were not needed.⁷ Thus, it is obvious to all interested parties that the state commission's standards should be applicable where they exist.

Finally, the *Collocation Order* points out that where state commissions have addressed the issue, in many cases they have actually set intervals that were equal or lower than the national intervals of the *Collocation Order*.⁸ Accordingly, requiring an ILEC to conform to the national standards would be a burdensome task with no recognizable tangible benefit.

⁷ See *Collocation Order* ¶ 36, n. 92.

⁸ See e.g., *id.* Texas commission set an interval of 90 days for caged and 70 days for cageless; Pennsylvania commission requires caged collocation within 90 days of receiving CLEC's deposit; Florida commission requires collocation within three months of receiving the CLEC's deposit. *Id.* ¶¶ 17 – 19.

II. Conclusion

Based upon the reasons stated herein, BellSouth requests that the Commission clarify that paragraph 36 of the *Collocation Order* does not require an ILEC to amend its state tariffs or SGATs to conform to the national collocation standards in states where the state commission has already set collocation standards through a state proceeding. If paragraph 36 does impose such a requirement, BellSouth asks that the Commission waive those requirements in those states that have already taken action consistent with paragraph 22. Without such a waiver, BellSouth will be faced with the untenable position of trying to determine which standards apply – those established by the state and set forth in the SGAT or tariff or those set forth in the *Collocation Order*. Under those circumstances, the *Collocation Order* has BellSouth caught between Scylla and Charybdis and the Commission must therefore waive the requirement of paragraph 36, which is inconsistent with the remainder of the *Order*.

Respectfully submitted,

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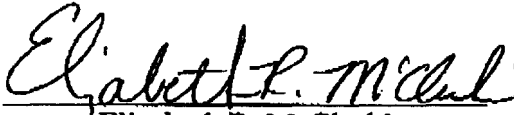
Date: October 4, 2000

CERTIFICATE OF SERVICE

I do hereby certify that I have this 4th day of October 2000 served the following parties to this action with a copy of the foregoing PETITION FOR CLARIFICATION OR IN THE ALTERNATIVE FOR A WAIVER by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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